

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
NEW YORK BRANCH OFFICE**

VERIZON NEW YORK, INC.

AND

CASE NO. 29-CA-30039

**COMMUNICATIONS WORKERS OF
AMERICA, AFL-CIO**

***Nancy Reibstein, Esq.*, for the General Counsel
E. Michael Rossman, Esq., (Jones Day), of
Columbus, Ohio and *Steven Martin, Esq.*,
of New York, New York, for the
Respondent
Amy S. Young, Esq., of New York, New York,
for the Union**

DECISION

Statement of the Case

ELEANOR MACDONALD: Administrative Law Judge: This case was tried in Brooklyn, New York, on May 18 and 27, 2010. The Complaint alleges that Respondent, in violation of Section 8(a)(1) and (5) of the Act, refused to furnish the Union with information in connection with a pending grievance. Respondent denies that it has engaged in any violations of the Act.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the parties on August 6, 2010, I make the following¹

Findings of Fact

I. Jurisdiction

Respondent, a corporation with facilities at 741 Zeckendorf Boulevard, Garden City, New York and 720 Larkfield Road, East Northport, New York, is engaged in the telecommunications industry. Annually, Respondent derives gross revenues in excess of \$100,000 and purchases and receives at its Garden City facility, goods and materials valued in excess of \$5,000 directly from suppliers located outside the State of New York. Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act, and that Communications Workers of America, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

¹ The record is hereby corrected so that at page 39, line 10, the correct name is Tracy Riess; at page 41, line 1, the date is in 2009.

II. Alleged Unfair Labor Practices

A. Background

Respondent and the Union have been parties to successive collective-bargaining agreements, the most recent of which is effective from August 4, 2008 to August 3, 2011. The appropriate unit is defined as

Included: All employees of Verizon New York, Inc., and of the Telesector Resources Group, Inc., in locations that are not within the states of Maine, Massachusetts, New Hampshire, Rhode Island, and whose occupational classifications are listed in the craft, building and supplies, clerical and miscellaneous groups appearing in Article 31 and which employees and occupational classifications are part of Company organizations that were formerly part of the New York Telephone Company's plant, network operations, customer services, technical services, engineering and facilities organizations; all employees in the Empire City Subway Company (limited).

The issue in the instant case arises out of an incident that took place on May 29, 2009 in the Commack Garage located in Suffolk County, Long Island, New York.² Michael Oddo, the Union's Chief Shop Steward in the garage, and Thomas Elias, the company Field Manager, were discussing a grievance relating to the discipline of bargaining unit technicians.³ The grievance discussion became heated and led to some physical contact between Oddo and Elias. Thereafter, Respondent's Security Department conducted an investigation and on August 4, 2009 it issued an investigative report, also called a security report. On August 5, 2009 Respondent issued a written warning to Oddo. The Union filed a grievance and requested the security report and other information. Although some information was furnished to the Union, there is a dispute about a portion of the security report that was not disclosed.

In addition to Field Manager Elias, Respondent's managers involved in this matter are the following:

Tracey Edwards, Vice President responsible for installation and maintenance of FIOS and copper products

Wajeeha Aziz, Field Director of FIOS in Suffolk County, a third level manager

Tracy Riess, second level manager for FIOS in Suffolk County

Peter De Rosa, formerly a supervisor in Commack, now a manager in Hawthorne

Paul Duryea, FIOS manager in Suffolk County

Richard Coulton, Senior Consultant in Labor Relations for Verizon

In addition to Chief Shop Steward Oddo, the other Union officials involved in this matter are the following:

² The garage is occasionally said to be located in Northport and not in Commack.

³ Oddo has been Chief Steward for 10 years.

Robert Morrow, President of CWA Local 1108,

Donald Dunn, Executive Vice President of Local 1108

5 David Lamberson, Union business agent for North Suffolk County

B. The Warning to Oddo and the Requests for Information

10 Union Vice President Donald Dunn testified that on August 5, 2009, he received a telephone message from manager Waheeja Aziz informing him that Respondent had issued a written warning to Michael Oddo. Dunn went to the Commack garage to attend the meeting where the warning would be given to Oddo. Manager Tracy Riess read the warning to Oddo in Dunn's presence. Dunn asked Riess a few questions and informed her that the Union was filing a grievance. Dunn gave Riess a written request for information. Riess took notes and said she
15 would give the information request to her boss. Dunn told Riess he wanted the information before he sat the grievance.

The Notice of Warning issued to Oddo read as follows

20 This letter serves as written warning. On May 29, 2009 you exceeded the boundaries of appropriate steward behavior. You disregarded several requests by Mr. Elias to let him leave his cubicle/office space and blocked his means of exit. While we are mindful of your rights as a shop steward, we cannot condone your behavior on the aforementioned date. Please be advised should you have another instance of this type of behavior you
25 will be subject to further disciplinary action.

The Union's request for information stated that certain documents were sought with respect to a grievance for "unjust warning." The information listed on the request was

30 Foremen Statements (Tom Elias, Jim Casciotta)⁴
EAP Notes, Recommendation
Mike Oddo's previous history of aggression and any other warnings and disciplines and corrective training
Mike Oddo's Teds report and evaluations and appraisals⁵
35 Security report and all statements taken about the incident

Union President Robert Morrow was on vacation on August 5 when he learned from Dunn that Oddo had received a written warning. As president of the Local, Morrow generally deals with Respondent's Vice President Tracey Edwards. Morrow telephoned Edwards on
40 August 6 to ask why he had not been told about the warning. Morrow told Edwards that the Union wanted all the information pertinent to the case, including the investigative reports, any managerial reports and the interviews. Edwards assured him that the information would be in his office when he returned from vacation. Morrow testified that the Union has always asked for these documents in the past and they have always been provided. Edwards did not testify
45 about the August 6 conversation with Morrow. Indeed, she testified, "I don't recall the first date that I spoke with Bob Morrow."

On August 7, 2009 Aziz telephoned Dunn to discuss the agenda for a series of second

50 ⁴ Casciotta is not further identified herein.

⁵ The Ted's report was not mentioned at the instant hearing.

step grievances. Dunn told Aziz that he was still waiting for the information he sought with respect to Oddo's warning. Dunn asked Aziz whether she had received the written request from Riess and Aziz said "yes" and that she would look into it and would get Dunn what he needed. Aziz told Dunn that if anything was missing he should contact her. On August 14, Dunn spoke to Aziz and told her that he had not yet received anything in response to his information request. Aziz said, "They are reviewing it". Aziz informed Dunn that she did not know if he would get everything he asked for, but she not specify what information might be withheld from the Union. Dunn said he did not understand why he would not be given everything he had requested; he remarked that the Union had received this information in previous cases. Dunn said the Union needed the information to determine whether it had an argument about the warning and whether it should pursue the grievance. Aziz said she would check and get back to Dunn.

When Morrow returned from vacation on August 17 he learned that the information requested from Respondent had not been provided. He telephoned Edwards but she was away. Morrow called Aziz and told her that Edwards had promised he would have the information upon his return. Aziz replied that she was not aware of Morrow's conversation with Edwards but that she would give the information to the Union at the second step of the grievance. Morrow repeated that Edwards had assured him the information would be there when he returned from vacation. Aziz advised Morrow to call Edwards upon her return. During this conversation Morrow described the information the Union was seeking as the security interviews and all the interviews the foreman may have done in the garage. Morrow said he needed the information and could not go forward without it.

Aziz did not testify herein.

On August 21, 2009 Dunn wrote an e mail to Aziz, enclosing a copy of the Union's request for information. The e mail stated

This is a copy of the Request for Information that was given to Tracy Riess on Wednesday August 5th 2009 immediately after Mike Oddo was given a written warning. As of today we still don't have the information.... [Matter relating to other issues omitted here.] I don't know what the problem is with getting us this information. We ask for this information and get it all the time when a grievance is filed for discipline (warning, suspension, etc.) Please get back to me when you get a chance.

Morrow and Edwards spoke on August 25. According to Morrow, Edwards told him she had not realized that one security report dealt both with a craft employee (Oddo) and a management employee (Elias). Morrow repeated that he needed all the information to make the case. Edwards said she had spoken to the legal department and they would tell her what to give the Union. Morrow said he needed everything and Edwards said he would get what he was entitled to. Morrow testified that during this conversation Edwards did not mention any concern related to confidentiality. She did not say she would give the Union only those portions of the report that she relied on to discipline Oddo. Morrow stated that he did not tell Edwards that he would accept only those parts of the security report that the company relied on in issuing the discipline.

Edwards testified that she did not recall the first date she spoke with Morrow and, after consulting a document that was placed before her, she stated that it was August 25. She added that this was her first conversation with Morrow about the Oddo matter. Edwards acknowledged that she told Morrow of her concern that the Security report was a combined report for Oddo and Elias. Edwards also testified that she informed Morrow that she was concerned for the additional reason that giving the Union all the information it asked for would identify employees

who spoke to Security and might lead Oddo to retaliate against these employees. According to Edwards, Morrow said he understood her concerns, he wanted to protect Oddo and he wanted the information that she had used to discipline Oddo. Edwards told Morrow that she would redact confidential information and would not provide the statement Elias gave to Security because it was irrelevant in her discipline of Oddo.

Edwards testified that Oddo had past incidents of confrontations with other employees and she was concerned about "workplace violence" because she had heard Oddo described by managers as a "hot head" who retaliated against people. Edwards is aware of only one disciplinary action against Oddo. In this connection, manager Peter DeRosa testified that in August 2007 when he was a supervisor in Commack he had a confrontation with Oddo. Oddo had completed his assignments for the morning and did not want any further jobs that day because he had to handle a grievance. When DeRosa gave Oddo additional assignments Oddo screamed and cursed at him. DeRosa suspended Oddo for the afternoon. DeRosa is aware that Respondent has a "zero tolerance" policy for workplace violence yet DeRosa did not call Security about the incident. DeRosa testified that he never spoke to Edwards about this confrontation although he reported it to his direct supervisor at the time. The first time anyone from management asked DeRosa about this incident was a few weeks before the instant hearing. Additionally manager Paul Duryea testified that when he was a unit member in 2002 and Oddo was his shop steward, he and Oddo had confrontations about the Union's policy concerning completion of work assignments. Oddo cursed and yelled at him on more than one occasion. Duryea did not ask his manager to take any action against Oddo and he did not report to Security. However, he told his friend DeRosa about his relationship with Oddo. Duryea stated that it is common to hear the word "fuck" in the garage and that such language was not shocking. He added, "You're cursing all the time." The first time any of Respondent's representatives asked Duryea about his relationship with Oddo was two weeks before the instant hearing.

Edwards testified that she had approved the warning issued to Oddo on the basis of the August 4, 2009 security report and after a discussion with Aziz. According to Edwards she relied only on the portion of the security report where Oddo described his actions during the incident involving Elias. Edwards maintained that she did not rely on any other portions of the report or interviews included in the report.

On August 28, 2009 the Union received a response to its information request. A cover letter to Morrow from Edwards stated that she was enclosing a copy of the security report she had received. She further wrote

As we discussed during our telephone conversation on August 25, 2009, I am including only those portions of the report that I considered in making my decision to have Mr. Oddo receive a warning for his actions, which is what you acknowledged you were interested in seeing. Information unrelated to my decision regarding Mr. Oddo has been redacted.

The enclosed report, entitled Investigative Report, contained the following Conclusion

On May 29, 2009, Local Manager Thomas H. Elias admitted he raised his hands onto the chest of Field Technician Michael Oddo in order to move him out of the way while trying to exit his office following a disciplinary discussion, but denied pushing him backward into another technician. Witnesses outside the office stated that they saw the door open and Mr. Elias raise two hands on Mr. Oddo's chest, pushing him out. Witnesses inside the office corroborated Mr. Elias' statement that Mr. Oddo repeatedly

blocked him with his body and they bumped bellies as Mr. Elias attempted to pass Mr. Oddo to exit the doorway, even after Mr. Elias gave numerous verbal directives for him to get out of his way so he could exit.

5 Field Technician Michael Oddo admitted body blocking Mr. Elias's attempt to exit the office, claiming he did so because he was in the middle of a discussion with him, despite hearing Mr. Elias instruct him to get out of his way. Mr. Oddo also admitted he continually tried to speak with Mr. Elias during the disciplinary discussion and as Mr. Elias tried to leave the office, and that he may have stated that Mr. Elias had to speak to him now, because he is a Chief Steward.

10 The Investigative Findings attached to the report consists of five pages almost half of which are blacked out. A major portion of the "synopsis of events" is blacked out. The entire portion of a statement made by Elias is blacked out. Also attached to the report is a Memorandum of Interview. The interview with Oddo is given in its entirety. An interview conducted with another person is entirely blacked out, and the name of the person interviewed is not given.

20 In a section entitled "Background" the security report states that Oddo was the subject of two previous workplace violence investigations. No disciplinary actions were taken in those instances. The report also states that on August 16, 2007 Oddo was suspended by his manager Peter DeRosa for insubordination and for verbally abusing management and disrupting the workplace. Oddo was given one day off without pay as a result of the incident.

25 After Morrow received the report on August 28 he telephoned Edwards. Morrow told Edwards that a lot of material was blacked out in the report and he said the Union needed more information. Morrow asked to see what Elias had told Security during his interview; he said the information was necessary for a decision about the grievance. Edwards replied that Morrow had been given all the Union was entitled to get; he had the material on which she had based her decision. Edwards did not testify about this conversation.

30 Morrow spoke to Edwards again on August 31. Edwards testified that on August 31 Morrow told her that after speaking to his Chief Steward he wanted additional information. Morrow gave Edwards the names of field technicians present at the May 29 incident who had been interviewed by Security in the presence of the Union's Chief Steward. Morrow said he wanted to be sure the Security report accurately reported their interviews.

40 Later that day Morrow received a one page summary of interviews conducted by Security with six named field technicians who had been present during the May 29 incident. I note that the summaries provided on August 31 contained significant facts relating to Oddo that had not been included in the Conclusion and Investigative Findings given to the Union on August 28. To cite only two examples; three technicians described how Elias pushed Oddo out of his office causing Oddo to fall backwards onto a fourth technician who then fell, hurting his head and neck.⁶ Three technicians stated that after Elias pushed Oddo out of his office Elias continued the confrontation by taunting Oddo and inviting Oddo to hit him, but Oddo avoided further contact with Elias.⁷

Morrow had asked Edwards for documents showing the full interviews, not just the

50 ⁶ These were Richard Boyle, Johnnie Metzger and Shawn O'Gara.

⁷ These were Jeff Thieke, Richard Boyle and Shawn O'Gara.

summaries. Moreover, Morrow had asked for the interview with Elias. This material had not been provided.

5 Edwards testified that she provided the Union with everything she believed was relevant to the discipline of Oddo; she herself decided what was relevant. Edwards knew that the Union had requested the Security Report "in order to defend Oddo." She did not think the interview with Elias was relevant to the Union's defense of Oddo in the grievance procedure. Originally she had also redacted the names and summary interviews of all the employees who were present at the incident. However, Edwards acknowledged that since these employees had all
10 been there with Oddo on May 29 their identities would have been known to him and to the Union. Edwards did not offer the Union an entire unredacted report conditioned on keeping certain material confidential from Oddo.

15 Edwards testified that after August 31, 2009 she did not speak to Morrow or any other Union agent about the information request. Neither Coulton, nor Aziz nor Riess ever told her that the Union wanted more information.

20 Morrow testified that after speaking to Edwards he realized that he would not be able to resolve the issue with her as he had hoped. As a result he turned the matter over to Dunn for resolution in the grievance procedure. Dunn would have to get the information from Respondent's labor relations department. Morrow stated that before the Oddo matter arose, he had been given about 30 security reports by Respondent and that none had been redacted. Edwards stated that this was the first time she had heard of a Security Report being redacted before it was turned over to the Union.

25 Morrow instructed Dunn ask Labor Consultant Richard Coulton why the company would not provide all the information requested. On September 1, 2009 Dunn told Coulton the Union wanted the whole Security Report in order to proceed with the grievance. Coulton said he would look into the matter and see what he could do. Coulton did not explain why parts of the
30 report had been withheld. He did not say that Respondent was concerned about potential harassment of witnesses by Oddo and he did not cite any confidentiality concerns.

35 In early September 2009 Dunn attended a step 2 grievance for Oddo. Dunn was accompanied by business agent Lamberson and Oddo. Riess represented the company along with Mike Russell, a second level manager. The company denied the grievance. Dunn asked Riess why the security report was blacked out and he told her that he needed the full security report and memorandum of interviews to determine whether to proceed to the third step. Riess did not know why the security report was blacked out. She wrote down Dunn's request for information and promised to relay it to Aziz. Riess did not raise any issue with respect to
40 confidentiality of the Security Report nor did she allude to possible harassment of witnesses by Oddo. Lamberson corroborated Dunn's account of this meeting including Riess' statement that she would ask her boss about the report.

45 Riess did not testify herein.

At the monthly third step grievance meeting in September attended by Dunn and Coulton, Dunn again asked Coulton if the Union would be getting the full Security Report. Dunn said he would not put the Oddo grievance on the agenda until he saw what was in the report. Coulton said he would look into the matter and see what he could do. Dunn repeated his
50 request in several further telephone conversations with Coulton.

At the monthly third step grievance meeting in December Dunn again asked Coulton for

the Security Report. Coulton said he did not know if it would be given to the Union. Dunn said he would put Oddo's grievance on an upcoming agenda so that the company would have to discuss the issue of the Security Report in a formal manner. Lamberson also attended this meeting and he testified that Dunn asked about the Report.

On January 19, 2010, Lamberson telephoned Coulton to ask about the Security Report. Coulton told him the Union would not get any further information; he said the Union had all it was going to get. Coulton did not explain why some material had been blacked out. Coulton did not mention that the report contained confidential information. Lamberson testified that the Union normally obtains unredacted Security Reports from the company.

Coulton denied that Dunn had asked him for the Security Report before January 19, 2010. On that day, according to Coulton, both Dunn and Lamberson asked him for the Report.

C. Discussion and Conclusions

I find that Morrow had a better recall of the relevant events than did Edwards. Morrow testified without hesitation and in convincing detail about his conversations with Edwards on August 6 and 25, 2009. Edwards did not recall the August 6 phone call even though she personally had approved the warning issued to Oddo just the day before. Based on her perusal of a document, Edwards testified that she first spoke to Morrow on the 25th, although a moment before she had stated that she could not recall when she and Morrow first discussed the Oddo matter. Further, Edwards did not recall that Morrow complained to her about the redacted security report immediately after he received it on August 28. However, she recalled that on August 31 Morrow asked for the interviews of named witnesses to the incident involving Elias and Oddo and the Union was provided with the information later that day. Based on my close observation of Edwards as she testified and on my review of the record, I believe that Edwards based her testimony on the written documents before her and that she had little independent recall of the actual conversations about which she was asked. Edwards' testimony about the phone calls with Morrow were based entirely on the contents of her letters to him and did not give the impression that they derived from an present memory of what was said. I shall credit Morrow's testimony in making my findings herein.

I credit Dunn that on September 1, 2009 and on several other occasions he asked Coulton for the entire security report. Dunn testified convincingly and in great detail about these requests and I find his description of the conversations to be reliable. I do not credit Coulton's denials.

Beginning on August 5, 2009 when Respondent issued a written warning to Oddo, the Union diligently pursued its request for information. Among the items requested by the Union were statements made by Foremen Elias and Casciotta and the "Security report and all statements taken about the incident." I find that on August 6 Morrow asked Edwards for all the information including investigative reports and the interviews. On August 14, Aziz told Dunn that the request was being reviewed and that the Union might not get all the information it had requested. Morrow asked Aziz for the information on August 17, informing her that he had already spoken to Edwards about the request. As noted above, Aziz was not called to testify by Respondent.

I find that on August 25 Edwards told Morrow that she had not realized that Security had issued one report dealing with both Oddo and Elias; Edwards said she was consulting the legal department. I credit Morrow that Edwards did not mention any concern about witness confidentiality. I credit Morrow that he never agreed to accept only the part of the security report

that Edwards relied on to discipline Oddo. It strains credulity that the president of a Union, vigorously pursuing an information request so that the Union could pursue a grievance on behalf of a Chief Steward, would agree to let management decide what was relevant to the Union's case. I do not credit Edwards that Morrow agreed to let her redact any information from the security report. I do not credit Edwards that Morrow agreed to forego receipt of Elias' statement to Security. The Union had been seeking Elias' statement since the day that Oddo received the disciplinary warning. I find that the concern Edwards expressed to Morrow was based on her desire to prevent the Union from seeing those parts of the security report that dealt with and evaluated Elias' conduct. Edwards had apparently forgotten or had not realized that this material would be in the same report as the report dealing with and evaluating Oddo's conduct.

The heavily redacted report given to the Union on August 28 did not contain large portions of the synopsis of events, it did not contain Elias' statement and it did not contain interviews with anyone other than Oddo.

After Morrow made it clear to Edwards that the Union was aware of the identities and the content of the statements given by six technicians who had been interviewed by Security, Respondent gave the Union a summary of the interviews with the technicians, but did not turn over the actual interviews as requested by the Union. Significantly, this newly turned over material might have been exculpatory with respect to Oddo in a grievance brought to arbitration by the Union. For example, the summary shows that Elias pushed Oddo backwards out of his office and onto a technician who fell and injured his head and neck. After Oddo fell Elias continued the incident by taunting Oddo and inviting Oddo to hit him. Thus, the Union had every reason to believe that Respondent might be withholding even more information that would be helpful in pursuing a grievance.

I credit Dunn that on September 1, 2009 he asked Coulton for the entire security report. I credit Dunn that Coulton did not raise any issues with respect to the confidentiality of witnesses. I credit Dunn that he pursued his request with Coulton on several other occasions in the fall and winter of 2009. I credit Dunn that he asked Riess for the security report in early September.

The record shows that before the instant case the Union has never been denied a security report of an incident and such reports in the past have not been redacted.

The applicable law in this area is well-established and requires no extended discussion or citation. An employer has an obligation to provide information to a bargaining representative necessary for the performance of its duties, including information necessary to evaluate a grievance. There must be a probability that the information sought is relevant and would be of use to the Union. A broad discovery-type standard is used in determining relevancy. *NLRB v. Acme Industrial Co.*, 385 U.S. 432, (1967). The burden is on the employer to show that the information sought by the Union is not relevant. *SBC California*, 344 NLRB 243, 245 (2005).

Respondent disciplined Oddo for an incident with Elias. The interview statements of Elias and any other witnesses are clearly relevant to the Union's decision whether to pursue a grievance on behalf of Oddo. The interview statements would help in evaluating Oddo's actions in the light of Elias' actions during the incident and would assist in evaluating the discipline imposed upon Oddo. The statements would assist the Union in evaluating Oddo's credibility and in weighing the likely success of a grievance.

Respondent's position that only Oddo's description of the encounter with Elias, but not Elias' part in the incident, was considered in disciplining Oddo and is relevant to a grievance

brought on behalf of Oddo is risible and unworthy of further discussion. Oddo was disciplined for an incident involving physical contact with Elias; Elias' statement about his part in the confrontation is entirely relevant to the Union in deciding whether a grievance should be pursued on Oddo's behalf and would be helpful to the Union in defending Oddo.

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I find that Respondent has not shown that the material sought by the Union is not relevant. Further, Respondent has not shown any justification for refusing to turn over the material requested by the Union.

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The testimony of DeRosa and Duryea about Oddo's past conduct as justification for withholding the security report and the statements is not convincing. Edwards did mention these incidents when she spoke to Morrow on August 25 and she did not mention Oddo's purported temper or past actions when she told Morrow she was concerned about giving the Union all the information it sought.⁸ On August 25 Edwards expressed only her surprise that the report would contain information dealing with and evaluating Elias' conduct. Edwards had never before seen a report that dealt with both a unit member and a manager under the same cover. Edwards was consulting the legal department about her quandary. I find that the dredging up of incidents in Oddo's past is a belated attempt to justify Respondent's refusal to give the Union material relating to a manager, material that would assist the Union in deciding whether to pursue the grievance and may well have been helpful to or even exculpatory of Oddo in the grievance procedure.

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Manifestly, Oddo and the Union were aware that Elias and another foreman had made a statement to Security. Keeping their identities secret is not an issue. Further, Respondent has not shown that Oddo is incapable of resisting a temptation to retaliate against Elias due to something that might be contained in Elias' statement to security. Respondent's security report shows that on August 5, 2009 Elias taunted Oddo and tried to incite a physical confrontation, but Oddo refused to be provoked. Neither DeRosa's nor Duryea's testimony suggests that Oddo has a proclivity to physical confrontation. The record shows that everyone curses all the time in the garage and Oddo curses too. Oddo's outbursts against DeRosa and Duryea were in the context of heated discussions related to Oddo's duties as Chief Shop Steward and did not endanger anyone. Respondent has a zero tolerance for workplace violence and it obviously did not view Oddo's outburst to DeRosa as dangerous or it would have sought greater discipline than a one-day suspension. Thus, the incidents related by DeRosa and Duryea fail to justify any purported fear that Oddo would retaliate against any witnesses quoted in the security report.

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If Respondent had actually entertained a fear that Oddo would retaliate against Elias after seeing his statement, Respondent could have offered to give the Union the entire security report on condition that it not be shown to Oddo. Such an offer of accommodation was never made. Thus, I conclude that Respondent does not merely have a desire to keep Oddo from seeing the entire report; rather, Respondent wants to prevent the Union from seeing Elias' statement and any other relevant matter in the unredacted report.

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Conclusions of Law

1. Communications Workers of America, AFL-CIO, is the exclusive representative of Respondent's employees in the following unit for the purposes of collective bargaining

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⁸ Both DeRosa and Duryea were first interviewed about Oddo just weeks before the instant hearing.

Included: All employees of Verizon New York, Inc., and of the Telesector Resources Group, Inc., in locations that are not within the states of Maine, Massachusetts, New Hampshire, Rhode Island, and whose occupational classifications are listed in the craft, building and supplies, clerical and miscellaneous groups appearing in Article 31 and which employees and occupational classifications are part of Company organizations that were formerly part of the New York Telephone Company's plant, network operations, customer services, technical services, engineering and facilities organizations; all employees in the Empire City Subway Company (limited).

2. By failing and refusing to furnish the Union with the information requested on August 5, 2009, Respondent violated Section 8(a)(1) and (5) of the Act.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁹

ORDER

The Respondent, Verizon New York, Inc., 741 Zeckendorf Boulevard, Garden City, New York and 720 Larkfield Road, East Northport, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to furnish the Union with the information requested on August 5, 2009.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Provide the Union with the information it requested on August 5, 2009 in connection with the discipline of Michael Oddo.

(b) Within 14 days after service by the Region, post at its Commack Garage in Northport (Commack), New York, copies of the attached notice marked "Appendix."¹⁰ Copies of the

⁹ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

¹⁰ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the

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notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 5, 2009.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. , November 16, 2010.

Eleanor MacDonald
Administrative Law Judge

National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT fail and refuse to furnish Communications Workers of America, AFL-CIO information requested that is relevant to a grievance.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL furnish to the Union the information it requested on August 5, 2009 in connection with a grievance relating to the discipline of Michael Oddo.

Verizon New York, Inc.

(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov.

Two MetroTech Center (North), Jay Street and Myrtle Avenue, 5th Floor

Brooklyn, New York 11201-4201

Hours: 9 a.m. to 5:30 p.m.

718-330-7713.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 718-330-2862.